

**Town of Erie
Ordinance No. 36-2020**

**An Ordinance of the Board of Trustees of the Town of Erie Enacting
a New Section 6-10-16 of the Erie Municipal Code, Entitled Unlawful
Sexually Violent Predator Residency**

Whereas, the Board of Trustees is concerned about the numerous occurrences in which sexually violent predators who have been released from custody repeat unlawful acts, making the risk of victimization to society extremely high;

Whereas, the recent relocation of sexually violent predators to nearby jurisdictions has caused the Board of Trustees to consider the health, welfare, and safety of the residents of Erie; and

Whereas, the Board of Trustees desires to provide for the maximum protection of the health, safety, and welfare of the residents of the Town by prohibiting sexually violent predators from residing near certain public facilities where the public, and particularly children, regularly gather.

Now Therefore Be it Ordained by the Board of Trustees of the Town of Erie, Colorado, that:

Section 1. A new Section 6-10-16 of the Erie Municipal Code is hereby enacted to read as follows:

6-10-16: Unlawful sexually violent predator residency.

A. Findings and intent.

1. The Board of Trustees hereby finds that sexually violent predators present an extreme threat to the public safety. Sexually violent predators have a high rate of recidivism, making the cost of victimization to society at large extremely high. Prohibiting sexually violent predators from residing in proximity to places where children are located and limiting the frequency of contact is likely to reduce the risk of an offense.

2. This Section is intended to serve the Town's compelling interest to promote, protect and improve the public health, safety and welfare by creating areas around locations where children regularly congregate in concentrated numbers where sexually violent predators are prohibited from establishing temporary or permanent residence.

B. Definitions. For purposes of this Section, the following terms shall have the following meanings:

Child care center means a facility maintained for the whole or part of a day for the care of five or more children who are eighteen (18) years of age or younger, as more specifically defined in C.R.S. § 26-6-102(1.5), as amended.

Lacks a physical residence means when a person does not have a living situation that meets the definition of a temporary or permanent residence as defined in this Section, which may include without limitation: outdoor sleeping locations; sleeping in a motor vehicle; living in any public or private locations not designated as traditional living accommodations; or living in temporary public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the person remains at the location for less than fourteen (14) days.

Permanent residence: A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

School means any public, private, parochial, charter, or other school generally attended by students under eighteen (18) years of age, except for home schools.

Sexually violent predator: A person who is found to be a sexually violent predator pursuant to C.R.S. § 18-3-414.5, as amended.

Swimming pool means a publicly owned structure or facility used for the purpose of swimming or other water activities, including splash parks, but excluding any water-filled structures that are not publicly owned.

Temporary residence: A place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent residence, or a place where a person routinely abides, lodges, or resides for a period of fourteen (14) or more consecutive or nonconsecutive days in any month and which is not the person's permanent address.

C. Establishing residency. A person establishes residency through an intent to make any place or dwelling their residence. The prosecution may prove intent to establish a residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof the person accepted responsibility for utility bills, proof the person established a mailing address, or any other action demonstrating such intent. Notwithstanding the existence of any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen (14) days in any thirty (30) day period shall constitute the establishment of a residence.

D. Prohibitions.

1. It is unlawful for any person who has been found to be a sexually violent predator pursuant to C.R.S. § 18-3-414.5, *et seq.*, as amended, to establish a permanent or temporary residence within one thousand (1,000) feet of any Town-recognized park, playground, school, ball field, child care center, library, recreation center, swimming pool or any property located adjacent to any designated school bus stop.

2. It is unlawful for any person to lease or rent any portion of any property, room, place, structure, trailer, vehicle, or other living space to a sexually violent predator with the knowledge that it will be used as a permanent or temporary residence in violation of this Section.

E. Exceptions.

1. A person is not guilty of a violation of subsection D.1. of this Section if:

a. The person established the permanent or temporary residence prior to the effective date of this Section;

b. The person is under the age of eighteen (18) years of age and resides with their parents, step-parents or legal guardians;

c. The person is placed in the residence pursuant to a State of Colorado foster care program; or

d. The Town-recognized park, playground, school, ball field, child care center, library, recreation center or swimming pool was opened, or the school bus stop was established, after the person established the lawful permanent or temporary residence, and is not replacing a Town-recognized park, playground, school, ball field, child care center, library, recreation center, swimming pool or designated public or school bus stop.

2. A person is not guilty of a violation of subsection D.2. of this Section if:

a. The person leases or rented the property, room, place, structure, trailer, vehicle, or other living space to the sexually violent predator prior to the effective date of this Section;

b. The person leases or rents the property, room, place, structure, trailer, vehicle, or other living space to a sexually violent predator pursuant to a state-licensed foster care program; or

c. The person leased or rented the property, room, place, structure, trailer, vehicle, or other living space to the sexually violent predator prior to the opening of the Town-recognized park, playground, school, ball field, child care center, library, recreation center or swimming pool or designation of the school bus stop.

F. Measurement. For the purpose of determining the minimum distance separation required herein, the measurement shall be made by following a straight line from the outer property of the property on which the Town-recognized park, playground, school, ball field, child care center, library, recreation center, swimming pool or designated school bus stop is located to the nearest point of the permanent or temporary residence or location of the person who lacks a physical residence.

Section 2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that anyone, or part, or parts be declared unconstitutional or invalid.

Section 3. Safety. The Board of Trustees finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 4. Effective Date. This Ordinance shall take effect 30 days after publication following adoption

Introduced, Read, Passed and Ordered Published this 10th day of November, 2020.

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk